

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST:

THOMAS A. WERTH,
RESPONDENT.

FINAL DECISION AND ORDER
93 REB 057

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Thomas A. Werth
1500 East Pershing Street
Appleton, WI 54911

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached stipulation and makes the following:

FINDINGS OF FACTS

1. Thomas A. Werth, ("Werth"), 1500 East Pershing Street, Appleton, Wisconsin 54911, is a real estate broker having state of Wisconsin license number 21691, which license was originally granted to him on February 22, 1979.
2. C.I.P. Realty, Inc., ("Corporation"), 1303 America Drive, Neenah, Wisconsin 54956, is a Wisconsin Real Estate Corporation having license number 833678, which license was originally granted to it on May 4, 1988.
3. Gary J. Laeyendecker, ("Laeyendecker"), 648 Lake Crest Drive, Menasha, Wisconsin 54952, is a real estate broker having state of Wisconsin license number 28528, which license was originally granted to him on March 15, 1983.
4. William P. Sund, ("Sund"), 1200 Palisades Drive, Appleton, Wisconsin 54915, is a real estate salesperson having license number 19762, which license was originally granted to him on October 16, 1981.

5. At all times material hereto Laeyendecker and Sund were the sole owners of the Corporation and were officers of the Corporation. Currently, Laeyendecker is the president and treasurer of the Corporation and Sund is the vice-president and secretary of the Corporation.

6. In September and December of 1992, Auditor Jeanne Pegelow, an auditor for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, audited the real estate trust account of the Corporation pursuant to prescheduled appointments made with representatives of the Corporation.

7. Auditor Pegelow found, during the course of the audit, several instances in which the real estate trust account of the Corporation failed to have sufficient funds to cover all obligations and, in addition, the trust account bookkeeping system required by section RL 18.13 of the Wisconsin Administrative Code had not been properly maintained by the Corporation; and the Corporation had failed to reconcile the monthly bank statements for the Corporation's trust account for a substantial period of time. At the time of the audit, the trust account was overdrawn in the amount of approximately \$6,400.00. Said \$6,400.00 had been transferred to the "RE/MAX General Account" by Corporation trust account check number 1930, dated 4/30/92, signed by Werth. This money was subsequently transferred to the officers of the Corporation for their benefit.

8. The violations found by Auditor Pegelow included the following:

- a. Violation of RL 18.13(3), (4) and (5) of the Wisconsin Administrative Code by failing to have trial balances or bank reconciliations performed on the Corporation's trust account on a monthly basis.
- b. Violation of RL 18.13(1) of the Wisconsin Administrative Code by failing to record proper information in the trust account journal including the name of the parties depositing earnest money and the names of parties having disbursements made to them from the trust account and further by failing to have entries identified with corresponding ledger pages.
- c. Violation of RL 18.09 of the Wisconsin Administrative Code by making improper disbursements of trust funds on numerous occasions including the occasion occurring on or about April 30, 1992 by check number 1930 in the amount \$6,400.00 that was written from the trust account into the Corporation's general account.
- d. Violation of RL 18.10 of the Wisconsin Administrative Code by failing to determine how much money was in the trust account as "personal broker's funds" and by maintaining a sum in excess of \$300.00 in the trust account as funds to cover bank charges.

9. In response to investigation of this matter, corporate owners and officers Laeyendecker and Sund explained that they had delegated total responsibility for compliance with Administrative Rules for Wisconsin real estate trust accounts to their managing broker Werth.

10. As further explanation for the failure to perform even minimal compliance with Chapter 18 regarding maintenance and reconciliation of trust account records, Werth informed the Department of Regulation and Licensing that he had delegated that responsibility to a person named Jean Jennings, a temporary worker hired from Career Options, Inc., and that Jennings failed to perform the work properly.

11. Upon investigation, Jennings informed Investigator Garrette of the Department of Regulation and Licensing that Jennings had not been given responsibility for compliance with Chapter 18 of the Wisconsin Administrative Code. This information is contrary to the explanation of Werth. Jennings further informed Investigator Garrette that at the time she commenced working for the Corporation the Corporation had already been failing to reconcile the trust account on a monthly basis and that the trust account records were out of balance.

12. In explanation for the inappropriate disbursement of \$6,400.00 from the trust account into the operating account of the Corporation, Corporation representatives informed the Department of Regulation and Licensing that it did so upon the advice of Eric N. Hjortness, a certified public accountant located in Neenah, Wisconsin. Upon investigation, Hjortness informed the Department of Regulation and Licensing that he had not been hired to reconcile the trust account records of the Corporation in order to bring them in compliance with Chapter 18 of the Wisconsin Administrative Code. Instead, he had explained to the Corporation officers and to Werth, while doing other accounting services for the Corporation, that the trust account did not balance. Hjortness' contact with the trust account records was only on one specific day and not on a continuous basis.

13. Upon discovering the numerous violations set forth above, Auditor Pegelow instructed Werth the Corporation's officers to bring the account into balance and pay into the trust account sufficient broker funds to cover all shortages. The Corporation officers did comply with the auditor's instructions and brought the account into balance. Auditor Pegelow also informed the Corporation that all future use of the real estate trust account must be in conformance with the Wisconsin Administrative Code.

14. On or about July 8, 1994, Auditor Pegelow again reviewed the real estate trust account of the Corporation. Upon this review, Auditor Pegelow found that the Corporation continued to be out of compliance with the record keeping requirements of Chapter RL 18 of the Wisconsin Administrative Code.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to sec. 452.14, Wis. Stats.

2. The Wisconsin Real Estate Board is authorized to entered into the attached stipulation pursuant to sec. 227.44(5), Wis. Stats.

3. Respondent Thomas A. Werth has violated:

Sections 452.14(3)(a) and (i) of the Wisconsin Statutes and secs. RL 18.13(1), 18.13(3) and (4) and (5), 18.09 and 18.10 of the Wisconsin Administrative Code. By failing to perform the trust account duties delegated to him by Laeyendecker and Sund and by providing false information to the Department of Regulation and Licensing, that being that the cause of the failure of the Corporation to have a proper trust accounting system was that the temporary worker Jean Jennings had performed her work improperly when, in fact, Jennings was not hired to perform such work and many of the discrepancies in the trust account record keeping system preexisted the employment of Jennings.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is hereby accepted.

IT IS FURTHER ORDERED, that the **VOLUNTARY SURRENDER** of the real estate brokers license of Respondent **Thomas A. Werth**, license #90 21691, is hereby accepted.

IT IS FURTHER ORDERED, that the real estate brokers license of Respondent **Thomas A. Werth**, license #90 21691, and all rights and privileges relating thereto, are absolutely terminated effective at 12:01 a.m. on the tenth day subsequent to the date of this Order.

IT IS FURTHER ORDERED, that **Thomas A. Werth** be issued a real estate salespersons license upon his establishing in writing, to the satisfaction of the Board, all of the following:

1. That during the sixty days immediately subsequent to the termination of his real estate broker's license, as stated above, he has not engaged in the practice of real estate as a real estate broker or real estate salesperson, in any manner, either directly or indirectly; and

2. That he has successfully completed the following course modules from the real estate broker prelicense course at an educational institution approved by the Department of Regulation and Licensing:

- a. The four hour approved forms module (RL 25.02(2)(b));
- b. The four hour business ethics module (RL 25.02(2)(g));
- c. The five hour consumer protection module (RL 25.02(2)(h)); and
- d. The five hour trust accounts, escrow, closing statement module (RL 25.02(2)(c),

and that he has submitted proof of the completion of the same in the form of verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, Wisconsin 53708-8935. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing; and

3. That he has not violated any law relating to real estate practice by a real estate salesperson and real estate broker.

IT IS FURTHER ORDERED, that the real estate salespersons license granted to Respondent Thomas A. Werth pursuant to this Order be **LIMITED** in the following manner:

1. He shall not have access to or responsibility for, or over, a real estate trust account at any time during the two years immediately subsequent to the issuance of the salespersons license, and
2. He shall provide a copy of the Board Order in this case to his current employer and all subsequent employers during the two years immediately subsequent to the issuance of the salespersons license.

IT IS FURTHER ORDERED, that Respondent Thomas A. Werth may apply for issuance of a real estate broker license no earlier than two years subsequent to the issuance of the above mentioned limited real estate salespersons license. In the event that Respondent does apply for a real estate broker license, his application shall be subject to the provisions of all statutes and rules in effect at the time of his application.

IT IS FURTHER ORDERED, that file No. 93 REB 057 be, and hereby is closed as to all Respondents.

Dated this 7th day of DEC., 1995.

WISCONSIN REAL ESTATE BOARD

By: _____

A handwritten signature in cursive script, appearing to read "John A. Zepher", is written over a horizontal line.

CH:djm

WPPCHH-232

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST:	:	
	:	STIPULATION
THOMAS A. WERTH,	:	93 REB 057
RESPONDENT.	:	

The undersigned parties to this matter agree and stipulate as follows:

1. This stipulation is entered into for the purpose of resolving the matter known as investigative file 93 REB 057 as to the undersigned Respondents THOMAS A. WERTH, herein called "Respondent". The Respondent, in person and by his attorney Pharis Horton, and the Division of Enforcement, Department of Regulation and Licensing by its attorney Charles J. Howden, consent to the resolution of this matter pursuant to the terms of this Stipulation and the attached Final Decision and Order.

Respondent specifically offers to voluntarily surrender his real estate brokers license pursuant to the terms of the attached Final Decision and Order.

2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent has had the opportunity to consult with legal counsel regarding this matter and the legal implications of the stipulation. Respondent is represented in this matter by the undersigned Pharis Horton, Attorney at Law, P.O. Box 5621, Madison, Wisconsin 53705.

4. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

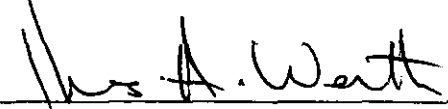
5. With respect to the attached Final Decision and Order, Respondent admits the facts as set forth in the Findings of Fact, and agrees that the Board may make the Findings of Fact and may reach the conclusions set forth in the Conclusions of Law and enter the Order attached hereto.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order. The matter shall then be returned to the Division of Enforcement for further proceedings in this matter. In the event that the Stipulation is not accepted by the Board the parties agree not to contend that members of the Board have been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. .

8. Respondent agrees that Complainant's attorney, Charles J. Howden, may appear at any meeting with the Board with respect to the Stipulation and that his appearance is limited to statements in support of the Stipulation and to answer any questions the Board may have regarding the Stipulation. Respondent waives his rights, if any, to have notice of that meeting.

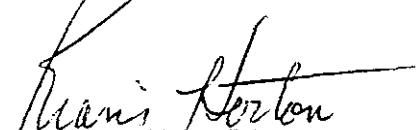
9. The Division of Enforcement joins Respondent in recommending that the Board approve this Stipulation and issue the attached Final Decision and Order.



THOMAS A. WERTH,
Respondent

11-24-95

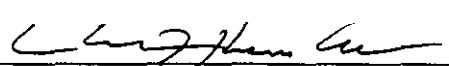
Date



PEARIS HORTON, Attorney
P.O. Box 5621
Madison, WI 53705

Nov. 24, 1995

Date



CHARLES J. HOWDEN, Attorney
Division of Enforcement

11/27/95

Date

WPPCHH11-17-95/2

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN REAL ESTATE BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

December 11, 1995

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)